



C.M.P.No.7798 of 2024.

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in S.A.SR.No.60427 of 2023

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T.V.THAMILSELVI, J.

The petitioner filed this petition praying to condone the delay of 263 days in filing the second appeal, challenging the Judgment and Decree dated 17.11.2017 in A.S.No.103 of 2013 on the file of the I Additional District Judge, Coimbatore arising out of the decree passed in O.S. 419 of 2009.

2. Before the trial Court, the petitioner/appellant filed a suit for specific performance, by directing the respondent/defendant to execute the sale deed as per the sale agreement held between themselves. Further, the defendant contested the suit, denied the sale agreement dated 12.12.2007 and stated that only there was a loan transaction between them.

3. On hearing both sides, the trial Judge had decreed the suit granted the relief of specific performance in favour of the petitioner/appellant herein. Aggrieved over the same, the defendant has preferred an Appeal in A.S.No.103 of 2013, wherein, the First Appellate Judge held that the



C.M.P.No.7798 of 2024.

plaintiff was not proved his readiness and willingness to execute the sale agreement. Therefore, the First Appeal was allowed. Challenging the same, the petitioner/appellant has preferred this second appeal.

4. The learned counsel for the appellant submitted that the appellant applied the certified copy on 21.11.2017 and it was made ready on 13.05.2022 and the same was collected on 23.05.2022 and thereafter it is kept for legal opinion, now he preferred this second appeal but there is delay of 263 days to prefer the same hence he prayed to condone the delay.

5. The learned counsel for the respondent raised objection stating that the petitioner filed this petition to condone the delay of 263 days as such erroneous one. He further submitted that the Judgment and Decree was passed on 17.11.2017 in A.S.No.103 of 2013. Thereafter, the defendant/respondent applied the copy application on 21.11.2017 in XCA.No.16738 of 2017, unfortunately, the said CA was struck off on 13.03.2018 for non-payment of Court fee, which means the certified copy was made ready by the Court in the month of March 2018. He further submitted that the counsel for the appellant/petitioner filed a certified copy



C.M.P.No.7798 of 2024.

on 11.03.2021 in XCA.No.2634 f 2021 after 90 days of Judgment. So, the period is calculated that day on wards, it comes around 5 years 5 months and 10 days totally 1987 days of delay. but suppressing the real period of delay, now the second appeal was filed as if there is a delay of 263 days. Further, he submitted that the defendant has verified the records it reveals that the copy application was filed by the appellant herein and there was some manipulation in the copy application. Moreover, the learned First Appellate Judge rightly concluded that the plaintiff was not proved his readiness and willingness to part of the agreement. Hence, he prayed to dismissal of this petition.

6. Considering the both submission, on perusal of the copy application, according to the petitioner, there is a delay of 263 days preferred this appeal however, the respondent has raised objection and stating that there is a delay of 7 years, it comes around of 1987 days itself. Further, in the typed set of papers produced by the respondent, the copy application was filed by the petitioner before the trial Court on 11.03.2021 and the same was complied before the trial Court on 26.03.2021 but

T.V.THAMILSELVI, J.



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C.M.P.No.7798 of 2024.

msrm

appeal was not filed immediately. Contention of the petitioner that he filed CA on 10.05.2022 also not contain proper seal and date as rightly pointed out by the counsel for the respondent.

7. As discussed above, the counsel for the petitioner/appellant applied for the certified copy on 11.03.2021 and the same was complied on 26.03.2021 but appeal was not preferred immediately. Further, the petitioner has suppressed the entire facts and filed this petition with wrong calculation of delay as such is erroneous one. Moreover, the delay also not properly explained for a period of 7 years, hence, this petition is dismissed.

21.10.2024

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